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MAR 29 1947

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1946

□

No. 840

MYRL E. ALEXANDER, WARDEN
Petitioner

v.

UNITED STATES OF AMERICA ex rel.
JOHN MYRON KULICK
Respondent

ON CERTIORARI TO
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SECOND CIRCUIT

□

No. 535

THEODORE MARTIN SUNAL
Petitioner

v.

DAVID R. LARGE, SUPERINTENDENT
Respondent

ON CERTIORARI TO
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FOURTH CIRCUIT

□

APPENDIX

TO JOINT BRIEF FOR RESPONDENT KULICK AND PETITIONER SUNAL

HAYDEN C. COVINGTON
Counsel

INDEX

TABLE OF CONTENTS

	PAGE
Number and title of cause	*Front cover*
I	
Men whose boards had granted them exemption as ministers of religion (Class IV-D), and who were thereafter ordered to do training and service without a showing of change in status	1-16
(1) John E. Adams	1-2
(2) Winfield A. Counts	2
(3) Paul R. Erickson	2-3
(4) Stanley J. Flakowicz	3-4
(5) David W. Garvin, Jr.	4-5
(6) Otto A. Jensen	5-6
(7) John M. Kulick	6-7
(8) William H. Lohrberg	7
(9) Pasqual Pellechia	7-8
(10) Alex Prostka	8-9
(11) Sam Pysh, Jr.	9
(12) Walter Pysh	10
(13) Walter Pytlak	10-11
(14) Henry W. Rusk	11-12
(15) Jack B. Ryals	12-13
(16) Rutherford G. Sakatos	13-14
(17) Hayes Turner	14-15
(18) Richard E. Ullery	15
(19) Hayward D. Ward	16

TABLE OF CONTENTS

PAGE

II

Men denied exemption but after conviction and serving terms classified as ministers 17-32

(1) Joel C. Adams 17-18
(2) Francis H. Clanton 18
(3) Charles M. Clayton 18-19
(4) Robert K. Deysher 19-20
(5) Garland P. Flythe 10-21
(6) Joe T. Gibson 21-22
(7) Howard M. Hilborn 22-23
(8) Charles K. Honaker 23
(9) Floyd E. Hull 23-25
(10) Charles V. Hultquist 25
(11) Henry D. Kelly 25-26
(12) Clarence W. Kruse 26-27
(13) Robert W. Mattson 27-28
(14) Howard R. Miller 28
(15) Henry O. Murphy 28-29
(16) Vernon G. Olson 29-30
(17) Donald E. Stull 30
(18) Thomas H. Stull 30-31
(19) Harold T. Watts 31-32
(20) George A. Williams 32

III

Cases indicating prejudice by draft boards and where due process was denied by said boards 33-41

(1) Thomas Balogh 33
(2) Ralph H. Cahoon 33-34
(3) William M. Estep 34-35
(4) Nick Faloo 35-36
(5) Verna L. Garland 36-37
(6) Floyd E. Hull 37
(7) William T. Klopp 37-38
(8) Louis D. Smith 38-39
(9) Thomas H. Stull 39-40
(10) William A. Wells 40-41

TABLE OF CONTENTS

PAGE

IV

Typical cases of full-time ministers denied exemption and IV-D classification 41-54

(1) Vincent C. Arpaia 41-42
(2) Fenton W. Burnside 42-43
(3) George W. Dodez 43-44
(4) William M. Estep 44
(5) Taze H. Gibson 44-45
(6) George R. Gutman 45-46
(7) Floyd E. Hull 46
(8) Otto A. Jensen 46-47
(9) Frank Kluz 47
(10) John M. Kulick 47-48
(11) Sam McGee, Jr. 48-49
(12) James L. Nelson 49-50
(13) Royal W. Rea 50-51
(14) Alex Rinko 51-53
(15) Theodore M. Sunal 53-54

V

Typical cases of part-time ministers denied exemption and IV-D classification 55-59

(1) Harold E. Goodrich 55
(2) Herman H. Grieme 55-56
(3) William T. Klopp 56-57
(4) Charles J. Meng 57
(5) Hober F. Parsons 57-58
(6) Sigismund E. Swaczyk 58-59

Letter from Hayden Covington to the Director of Selective Service, answer to which is printed (pp. 66-74) in brief filed by the Government in cause No. 840 60-61

APPENDIX

In the brief for these prisoners it is stated that the administration of the Selective Training and Service Act of 1940 was not consistent in all cases.

The purpose of this appendix is to submit substantial proof that Jehovah's witnesses have not been dealt with equally under the law. On identical facts presented to the various draft boards the determinations were not the same.*

I

Men whose boards had granted them exemption as ministers of religion (Class IV-D), and who were thereafter ordered to do training and service without a showing of change in status.

Some boards granted the claim for exemption while other boards, on the same facts, denied the claim for exemption. The most flagrant examples of arbitrary action, however, were where men were originally granted IV-D exemption and thereafter removed from the exempt status and classified as liable for training and service. A few of these cases typical of this arbitrary action are listed below:

(1) John E. Adams registered with Local Board No. 1, Charleston, West Virginia, in October, 1940. He had been one of Jehovah's witnesses since 1938. He claimed classification as a minister, although at the time he was not engaging as such full-time, but only as a "company publisher". On July 25, 1941, the local board, based on his claim in the questionnaire, placed him in Class IV-D. He entered the full-time pioneer ministry on October 12, 1942. Thereafter the local board withdrew the exempt classification and placed him in Class I-A and he was then placed in

* Many of the cases here referred to are available to this Court through an examination of the printed records filed in this Court. The great majority of cases referred to, however, are not thus available to this Court. But such cases are subject to the judicial notice of the Court. *Bowles* v. *United States*, 319 U. S. 33, 35.

Class IV-E. He thereupon wrote to the Director of Selective Service and the President to take an appeal in his behalf. This was refused. He failed to report for final-type physical examination because exempt as a minister. Upon trial of his case before Judge Ben Moore, a verdict of acquittal was directed because Adams was entitled to IV-D classification and was under no duty to report. The local board thereafter requested additional data concerning Adams' ministerial status from Adams and the local congregation at Charleston, West Virginia, and upon receipt thereof continued his IV-E classification in July, 1944. On December 6, 1944, he was again placed in Class IV-D by the board of appeal.

(2) Winfield A. Counts registered with Local Board No. 2, St. Petersburg, Florida, in October, 1940. He had been one of Jehovah's witnesses since 1939. He claimed Class IV-D. At the time he was engaged as a part-time minister (company publisher). Upon his questionnaire and claim, the local board, on June 24, 1941, placed him in Class IV-D, exempting him from training and service as a minister of religion. On July 1, 1943, he arranged his affairs to engage full time as a pioneer minister. Upon his informing the local board of his full-time status as a minister, the local board reclassified him, withdrawing his exempt classification and placing him in Class IV-E, July 19, 1943. On appeal, he was retained in Class IV-E by the board of appeal on September 13, 1943. He passed preinduction physical examination on January 14, 1944, and thereafter, on May 11, 1944, was ordered to report to a civilian public service camp. He reported and left the camp. On March 22, 1945, he was convicted and sentenced to two years' imprisonment.

(3) Paul R. Erickson registered with Local Board No. 1, Chariton, Iowa, on July 1, 1941. He claimed classification and exemption as a minister of religion in his questionnaire

and the local board recognized such claim by placing him in Class IV-D. He had been one of Jehovah's witnesses since 1939 and at the time of filing his questionnaire was a part-time (company publisher) minister. On April 1, 1942, he commenced his full-time pioneer ministry. On April 2, 1942, the local board withdrew his exempt classification and changed him to Class IV-E, making him liable for training and service. He timely appealed. On July 13, 1942, he filed a copy of his certificate of ordination. On August 28, 1942, the board of appeal changed his classification to I-A. He was thereafter ordered to report for induction on October 13, 1942. He failed to report. The local board had arbitrarily informed National Headquarters of Selective Service System that he had not claimed ministerial classification contrary to the facts. On October 19, 1943, he was convicted and sentenced to four years' imprisonment.

(4) Stanley J. Flakowicz registered with Local Board No. 252 of Forest Hills, New York City, December 21, 1942. He filed his questionnaire in January, 1943, claiming exemption and IV-D classification. Upon the evidence submitted the local board placed him in Class IV-D on January 29, 1943, thus exempting him from training and service as a minister of religion. He retained such exempt classification until September 27, 1943, when he was requested to appear before the local board due to the board's having received an anonymous, unsigned, undated letter on August 31, 1943, complaining against Flakowicz's exemption. On September 27, 1943, he was reclassified to I-A, after filing additional evidence as to his ministerial status. He was allowed a personal appearance pursuant to the Regulations on October 13, 1943, at which time he filed further evidence as to his exempt status. On October 15, 1943, his I-A classification was continued by the local board, whereupon he appealed and filed a statement of appeal. The board of appeal affirmed the I-A classification on November 1, 1943. He

was accepted by the armed forces upon a preinduction physical examination on January 31, 1944. He declined to report for induction on March 8, 1944, and was thereafter convicted and sentenced to serve three years' imprisonment on June 8, 1944. Upon appeal to the Circuit Court of Appeals the judgment was affirmed on January 22, 1945. (146 F. 2d 874) Certiorari was denied, 325 U. S. 851. In this connection attention is drawn to the decision of the Second Circuit Court of Appeals in *United States* ex rel. *Kulick* v. *Kennedy* on October 29, 1946, 157 F. 2d 811, where the court said: "Moreover, although a number of the decisions could be explained upon the ground that those inducted had not wholly exhausted their administrative remedies; in a number of others they had done so; and no distinction had been established between the two. Indeed, in *United States* v. *Flakowicz*, supra (146 F. 2d 874), which had been one of these, the Supreme Court denied certiorari only a fortnight before May 12. While that court has said over and over again that such denials are not to be taken as affirmances, it was not to be expected on May 12, 1945, that the court would grant a writ in precisely the same circumstances in which it had just denied one." On December 4, 1946, Flakowicz was released on habeas corpus. It should be noted that long prior to his registration and to the date of his sentence Flakowicz served as a full-time pioneer minister.

(5) David W. Garvin, Jr., registered with Local Board No. 2, Pittsburgh, Pennsylvania, July [illegible] 1941. He filed his questionnaire claiming ministerial exemption. In harmony therewith the local board exempted him from training and service and placed him in Class IV-D on September 8, 1941. He had been one of Jehovah's witnesses since 1934, serving as a part-time minister of the Allegheny Unit of the Pittsburgh, Pennsylvania, Company of Jehovah's witnesses. Pursuant to a letter received by the local board from State Headquarters, it wrote Garvin on April 7, 1944, that his classification was reopened and that he should appear

for a hearing on April 14, 1944. He appeared and discussed extensively his ministerial status and filed information in support of his IV-D claim. On April 18, 1944, the local board placed him in 1-A, withdrawing his exempt classification, making him liable for training and service. He was granted a personal appearance for April 28, 1944, when he again discussed extensively his ministerial claim and filed additional written material. On the same date the local board continued his 1-A classification. On June 21, 1944, the local board reclassified him to IV-E, making him liable for assignment to a civilian public service camp. He again appeared before the board on June 23, 1944, and the board not changing his classification, he appealed. The local board did not reduce to writing, as required, the oral evidence given at his personal appearance, thus depriving the board of appeal of information considered by the local board. On July 10, 1944, the board of appeal affirmed the IV-E classification. On July 9, 1945, the local board again placed him in Class IV-E, from which he appealed. On October 1, 1945, the board of appeal reclassified him to 1-A. He was accepted by the armed forces for training and service upon a preinduction physical examination on September 6, 1946. He was directed to report for induction on October 7, 1946. He reported in order to exhaust his administrative remedies but declined to submit to induction. On December 20, 1946, he was found guilty of violating the Act. His sentence is pending.

(6) Otto A. Jensen registered with Local Board No. 723, Valley Stream, New York, February 15, 1942. He filed his questionnaire on May 15, 1942, claiming Class IV-D as a minister of religion. Upon his claim and evidence submitted with his questionnaire, the local board placed him in Class IV-D on May 20, 1942. He had been one of Jehovah's witnesses since 1936 and was a part-time minister when he filed his questionnaire, but also served as assistant to

the presiding minister of the Jamaica Unit of the New York Company of Jehovah's witnesses, in the capacity of "territory servant". On December 21, 1942, he filed with the local board a certificate showing his appointment as a full-time pioneer minister on August 22, 1942. The local board thereupon arbitrarily reclassified him to Class IV-E on January 8, 1943. Following a personal appearance on January 10, 1943, he was continued in IV-E, whereupon he appealed. On August 17, 1943, the board of appeal reclassified him to 1-A. The local board ordered him to report for induction on November 23, 1943. He did not report and was thereafter sentenced to serve three years imprisonment on March 27, 1944. His case was affirmed upon appeal. (146 F. 2d 874) Certiorari was denied, 325 U. S. 851.

(7) John M. Kulick registered with Local Board No. 254, Jackson Heights, New York City, June 30, 1942. He filed questionnaire in November, 1942, claiming exemption and IV-D classification as a minister of religion. He was classified in 1-A on March 29, 1943. He requested a personal appearance, which was denied, the board stating that it was still considering the evidence filed with his questionnaire. The local board thereupon placed him in Class IV-D on April 28, 1943, upon receipt of further written evidence from Kulick. He was retained in Class IV-D until August, 1944. On August 23, 1944, the local board received a telephone message from the clerk of Local Board 255 informing Kulick's local board that "a mother of three sons in service" was at Board No. 255, complaining against Kulick. On this hearsay evidence, Kulick was deprived of exempt classification and placed in Class 1-A. Upon a personal appearance on August 30, 1944, Kulick explained that he spent but two hours weekly at secular work in order to support himself in the ministry. He gave extensive oral evidence which was not reduced to writing by the local board as required. He also filed additional written evidence in behalf of his minis-

terial claim. The local board continued him in I-A on August 31, 1944. He appealed on September 8, 1944, and reviewed his ministerial status in a statement of appeal. He was accepted upon a preinduction physical examination on September 11, 1944. The board of appeal affirmed the I-A classification on October 3, 1944. He was ordered to report for induction on November 9, 1944. He reported to exhaust his administrative remedies, but declined to submit to induction. On May 3, 1945, he was sentenced to serve three and one-half years' imprisonment. On May 6, 1946, habeas corpus was denied. Upon appeal, the case was remanded and he was released on habeas corpus.

(8) William H. Lohrberg registered on October 16, 1940, with Local Board 267, New York City. He filed questionnaire claiming IV-D classification as a minister of religion. Upon his claim and evidence submitted with his questionnaire, the local board placed him in Class IV-D on October 16, 1941. He had been one of Jehovah's witnesses since 1939 and was, at the time, a part-time minister, and assistant to the presiding minister of his congregation. On March 28, 1942, he abandoned secular activity and was appointed as a full-time pioneer minister. Subsequent thereto the local board, on August 14, 1942, deprived him of his ministerial classification and exemption and placed him in Class IV-E. Upon appeal, the IV-E classification was affirmed on February 3, 1943. He declined to report for induction after having been accepted upon a final-type physical examination. Thereupon he was sentenced to three years' imprisonment on December 3, 1943. Habeas corpus was denied on January 8, 1944. The Fourth Circuit Court of Appeals affirmed, March 17, 1944, (141 F. 2d 689) and certiorari was denied on May 22, 1944, 322 U. S. 744.

(9) Pasqual Pellechia registered with Local Board No. 1, Bangor, Pennsylvania, in October, 1940. He filed questionnaire on August 29, 1941, claiming IV-D classification and

exemption. Based thereon the local board placed him in Class IV-D on October 10, 1941. He had been one of Jehovah's witnesses since the summer of 1940 and was, at the time, serving as a part-time minister. On October 28, 1942, he was appointed as the Assistant Company Servant of the Bangor Company of Jehovah's witnesses and on January 1, 1943, he commenced his full-time ministry as a pioneer. He filed evidence thereof with his local board so they would be apprised of his full-time ministerial status. The local board, in spite of his advice to them, reclassified him to IV-E, denying his IV-D exemption, on October 14, 1943. He was granted a personal appearance for October 26, 1943, at which time he discussed his ministry and filed considerable written evidence. He was continued in Class IV-E by the local board and appealed on October 27, 1943. The board of appeal affirmed the Class IV-E on December 3, 1943. Failing thereafter to appear for induction, he was tried for a violation of the Act and sentenced to serve five years' imprisonment in September 1944.

(10) Alex Prostka registered with Local Board No. 263, New York City, on October 16, 1940. He became active as one of Jehovah's witnesses in January, 1941, associating himself with the Jamaica Unit of the New York Company of Jehovah's witnesses. He was placed in Class I-A by the local board on November 13, 1941. He thereafter filed with the board adequate proof of his ministry and was recognized by the local board for exemption and accordingly given Class IV-D on January 30, 1942. On October 7, 1942, he relinquished all secular work and became a full-time pioneer minister. The next day, October 8, 1942, the local board withdrew his IV-D and placed him in Class I-A. He appealed therefrom and for the return of his IV-D on October 16, 1942, submitting documentary proof along with his statement of appeal as to his full-time ministerial status. The board of appeal reclassified him to I-A on February,

1943. The Director of Selective Service failing to intercede in his behalf he was ordered to report for induction, failed to do so, and was thereafter sentenced to serve a period of three and one-half years' imprisonment on June 12, 1943.

(11) Sam Pysh, Jr., registered with Local Board No. 9, Gary, Indiana, February 16, 1942, and thereafter filed his questionnaire claiming exemption and classification in IV-D. He had been associated with Jehovah's witnesses all his life and particularly active since 1936. The local board placed him in Class I-A on August 14, 1942. He appealed therefrom for Class IV-D, filing additional evidence of his ministry with his appeal statement. On October 1, 1942, he became a full-time pioneer minister. On November 13, 1942, he appeared before a Hearing Officer of the Department of Justice with four witnesses, each testifying as to his ministerial status. He was placed in Class IV-E by the board of appeal on January 28, 1943. He filed additional evidence with the local board on February 4, 1943, and requested a reopening of his classification, pursuant to the Regulations. Such evidence consisted of his ordination certificate and other pertinent data. Based thereon the local board placed him in Class IV-D on February 8, 1943. The Government Appeal Agent of the local board appealed from the IV-D classification on February 25, 1944, and the board of appeal withdrew his IV-D on April 8, 1944, and placed him in Class IV-E. On May 5, 1944, he discussed his case with the Government Appeal Agent who stated that he was now of the opinion that the IV-D classification should not have been appealed from and accordingly on May 12, 1944, the Government Appeal Agent asked the State Director to reconsider the case. Nothing was done. He was accepted upon a pre-induction physical examination on May 12, 1944, thus exhausting his administrative remedies. Failing to report to a civilian public service camp, he was subsequently sentenced to serve five years' imprisonment on December 28, 1944.

(12) Walter Pysh registered with Local Board No. 9, Gary, Indiana, October 16, 1940, and thereafter filed his questionnaire claiming exemption and classification in IV-D. He had been associated with Jehovah's witnesses all his life and particularly active since 1938. Based on his ministerial claim the local board placed him in Class IV-D on April 28, 1941. The local board thereafter, on July 20, 1942, reclassified him to 1-A-O, but on appeal to the local board, it restored the IV-D to him on August 8, 1942. The State Director thereupon appealed his IV-D to the President and on August 26, 1942, the President placed him in Class IV-E. On October 12, 1942, he entered the full-time pioneer ministry and filed evidence thereof with the local board and the local board reopened his case again (even though he had been ordered to report for induction) and placed him in Class IV-D on February 8, 1943. In February, 1944, the Government Appeal Agent appealed this IV-D classification to the board of appeal. On April 7, 1944, the board of appeal placed him in Class IV-E. He was accepted upon a preinduction physical examination on May 12, 1944, thus exhausting his administrative remedies. Failing to report to a civilian public service camp, he was subsequently sentenced to serve five years' imprisonment on December 28, 1944.

(13) Walter Pytlak registered with Local Board No. 25B, Shelton, Connecticut, February, 1942, and thereafter filed questionnaire in April, 1942, claiming exemption and classification as a minister in Class IV-D. The board, based on information filed with the questionnaire, placed him in Class IV-D on May 22, 1942. Arrangements were then in effect with National Headquarters of Selective Service System to add names of pioneers, registering, to the official list. Upon application made the request was denied because he already had Class IV-D and adding his name would serve no useful purpose. He had been one of Jehovah's witnesses since 1936 and had been serving as a full-time pioneer min-

ister since October 1, 1941. On July 8, 1942, the local board took him out of Class IV-D due to his name's being denied admission to the certified official list by National Headquarters. On August 11, 1942, he was placed in Class I-A. He timely appealed and the board of appeal reclassified him to IV-E on May 28, 1943. A final-type physical examination was given him on September 28, 1943, at which time he was accepted for training and service, thus exhausting his administrative remedies. On failing to report for induction on November 30, 1943, he was arrested and thereafter sentenced in February, 1944, to serve two years' imprisonment.

(14) Henry W. Rusk registered with Local Board No. 2, Atlanta, Georgia, and thereafter filed questionnaire on August 26, 1942, claiming exemption and classification as a minister of religion. Based on such claim and other information filed with the questionnaire, the local board placed him in Class IV-D on September 10, 1942. In September, 1943, a neighbor telephoned the clerk complaining that he believed Rusk should be in the military service like all the other neighbors. Based on such complaint the local board reopened the case and reclassified him to IV-E on October 7, 1943. He was not notified of such classification but merely ordered to take a preinduction physical examination, October 14, 1943. He took the examination and was accepted. On requesting the board on that date to give him reason why he had been asked to take the examination, and that his ministerial status had not changed, they gave him no information as to his change of classification, as to the complaint, or that his classification had even been reopened, and did not mail his new classification advice to him until he left the board. He thereupon requested a personal appearance and an appeal. Upon appeal his IV-E classification was affirmed and he was thereafter ordered to report for work of national importance on January 8, 1944. Having exhausted his administrative remedies at his acceptance on preinduc-

tion physical examination, he did not report for work of national importance and was thereafter arrested and, on trial, sentenced to serve two years' imprisonment on August 1, 1945. The Fifth Circuit Court of Appeals affirmed on April 15, 1946. (154 F. 2d 763) Certiorari was denied on June 10, 1946. 66 S. Ct. 1380.

(15) Jack B. Ryals registered with Local Board No. 1, Atlanta, Georgia, October, 1940. He thereafter filed questionnaire claiming exemption and classification as a minister of religion in Class IV-D. He had been one of Jehovah's witnesses since 1933 and had served as a minister of the Atlanta, Georgia, Company of Jehovah's witnesses since August, 1939. He was first placed in Class IV-E by the local board and, on appeal to the board of appeal, continued in such classification. On July 5, 1941, he directed a letter to the Director of Selective Service asking that an appeal be taken to the President in his behalf. On August 15, 1941, he was mailed an order to report for work of national importance on August 28, 1941. Before the date he was to report the Director of Selective Service took an appeal to the President, who reversed the local and appeal boards and placed him in Class IV-D on September 17, 1941. In making the decision to give him IV-D, the President, among other things, said: "The evidence of record in this case is convincing that the registrant is a Jehovah's Witness and that he is recognized and accepted as a minister by those toward whom he stands in the relation as a minister. Based upon the facts of record the registrant is reclassified and placed in IV-D." About eight months later, at the instance of the State Director, the local board revoked the Presidential IV-D classification and placed him in IV-E. Upon appeal, the IV-E classification was affirmed by the board of appeal. In January, 1943, he was ordered to report for work of national importance. Failing to do so, he was arrested and brought to trial, in May, 1944, before Judge Marvin E.

Underwood, who directed a verdict of "not guilty" because of the lack of evidence in the record that his ministerial status had changed since being exempted by the President. He was thereafter directed to appear before the local board. The board admitted there had been no change in his status. He filed much documentary evidence in support of his claim. In spite of this the local board again placed him in Class IV-E and the classification was again affirmed by the board of appeal. In view of such arbitrary action by the local and appeal boards the Director of Selective Service took another appeal to the President and Mr. Ryals was again classified by the President in Class IV-D on November 30, 1944.

(16) Rutherford G. Sakatos registered with Local Board 212, Los Angeles, June, 1942. He filed questionnaire claiming exemption and IV-D classification. Based thereon, the local board recognized his exempt status and placed him in Class IV-D on January 27, 1943. He had been one of Jehovah's witnesses all his life. He had served as a full-time pioneer minister from July 1, 1940, until March 12, 1942, when it was necessary for him to engage in secular work to care for his ill mother. He was engaged in such secular work when placed in Class IV-D by the local board. On March 1, 1943, he was appointed as assistant to the presiding minister of the Hollywood Company of Jehovah's witnesses. Upon request of the local board on September 5, 1944, for additional evidence, he informed them of his position with the Hollywood company of Jehovah's witnesses. On September 18, 1944, the local board placed him in Class I-A, whereupon he requested a personal appearance. He was accepted by the armed forces for training and service at a preinduction physical examination on October 19, 1944. On October 24, 1944, he appeared and presented additional evidence and discussed his ministerial status and requested the return of the IV-D. He was continued in

Class I-A and he thereupon appealed, filing a copy of ordination certificate. The board of appeal affirmed on December 27, 1944. He failed to report for induction on February 8, 1945, and was sentenced to serve one year's imprisonment in April 1945. Upon conditional release from prison in January, 1946, he resumed his full-time ministerial work as a pioneer and so informed the local board. On June 5, 1946, the local board again placed him in Class I-A and retained him therein on July 2, 1946, following a personal appearance. The board of appeal affirmed such classification on September 30, 1946. Upon request to the Director of Selective Service, an appeal was taken to the President by the Director and, on January 22, 1947, the President classified him in IV-D.

(17) Hayes Turner registered with local board at Perry, Georgia, February 16, 1942. In his questionnaire he claimed exemption and classification as a minister in IV-D. He had been associated with Jehovah's witnesses since October, 1939. He had served as a full-time pioneer minister from November, 1940, to March, 1941, when, due to illness, he relinquished his full-time status. He resumed his full-time status on January 1, 1942, and was so serving at the time of his registration. Based on his claim and documentary proof he was placed in Class IV-D by the local board on May 22, 1942. He remained in such classification until January 15, 1945, when with no change in his ministerial status to warrant a change of classification, the local board placed him in Class IV-E. It was admitted there was no written information on file to show any change in his status. He filed a statement of appeal showing he was still engaged in full-time ministry. He was accepted by the armed forces on a preinduction physical examination on April 30, 1945. On September 14, 1945, the local board mailed classification advice showing that the board of appeal had reclassified him to I-A, and also mailed him an order to report for in-

duction on September 25, 1945. Instead of reporting he mailed a letter to the board explaining why he could not report. Upon trial he testified he had been denied a personal appearance by the board, having been falsely informed by the clerk that he *had* to appeal. On April 19, 1946, he was sentenced to serve two years' imprisonment. The Fifth Circuit Court of Appeals affirmed the judgment on October 30, 1946, *per curiam*. Certiorari was denied March 3, 1947.

(18) Richard E. Ullery registered with Local Board No. 142, Santa Barbara, California, April 22, 1944. He had been one of Jehovah's witnesses all his life. He was appointed as a full-time pioneer minister on July 1, 1942. He filed questionnaire claiming exemption and classification as a minister of religion. He filed considerable information concerning his ministerial activity. Upon the claim and evidence, the local board placed him in Class IV-D on May 18, 1944. The Government Appeal Agent appealed his case to the Board of Appeal which placed him in Class I-A. The local board thereupon informed the State Director that it was of the opinion that Ullery should be exempted and asked him to appeal the case to the President. The State Director refused to act. Ullery was accepted upon a preinduction physical examination on August 18, 1944. He was thereafter ordered to report for induction on October 12, 1944. He reported but declined to submit, whereupon he was arrested and brought to trial. The case was tried on January 5, 1945. The verdict of the jury was guilty. Federal Judge Claude McCulloch thereafter, on January 29, 1945, ordered the jury's verdict set aside and a new trial, on the ground that the board of appeal could not reverse a local board's decision on a record that contained no adverse evidence. Thereafter the case was dismissed. The local board directed Ullery to submit information as to his present status. Upon doing so, Ullery was again placed in Class IV-D by the local board.

(19) Hayward D. Ward registered with Local Board No. 1, Eastville, Virginia, June 30, 1942. He had been one of Jehovah's witnesses since 1939 and had served as an assistant to the presiding minister and as presiding minister, at Painter, Virginia. He requested classification as a minister of religion. In December, 1942, he was placed in Class IV-E. He appeared before the board and was thereafter placed in Class IV-D on January 13, 1943. In May, 1944, the board reclassified him to I-A, which classification was affirmed by the board of appeal on July 5, 1944. He failed to report for induction on August 1, 1944, and thereafter he was tried for violation of the Act on October 17, 1944. The case was nol prossed due to an error in the indictment. He thereupon entered the full-time pioneer ministry and so informed his local board. He thereafter received an order to report for induction on February 6, 1945. He complied with the order but declined to submit to induction. On June 26, 1945, he was tried before Judge Ben Moore at Charleston, West Virginia. He represented himself in court. Sentence was deferred after the judgment of guilty pronounced by the jury. The case was thereafter dismissed by Judge Moore. In May, 1946, the local board returned his Class IV-D.

II

Men denied exemption but after conviction and serving prison terms classified as ministers.

There are listed below a few typical cases of refusal by the draft boards to grant the exempt classification of IV-D where the records clearly indicated the men were entitled thereto under the Act, resulting in unnecessary convictions and prison sentences, and subsequent recognition of the exemption after the sentence was served.

(1) Joel C. Adams registered with Local Board 1, Highland Park, Illinois, in February, 1945, and thereafter filed questionnaire claiming exemption and IV-D classification. He filed considerable information showing he regularly performed ministerial duties. He had been one of Jehovah's witnesses since 1938 and had served as a full-time pioneer minister since June 1, 1943. The local board refused to recognize his claim and placed him in Class I-A on March 1, 1945. At a personal appearance he thoroughly discussed his ministerial activity and filed additional proof in writing. The local board, following the personal appearance, continued his I-A classification, whereupon he appealed. The board of appeal unanimously affirmed the I-A classification on April 27, 1945. While his file was at the board of appeal, he was accepted upon a preinduction physical examination as fit for training and service by the armed forces on April 7, 1945. He requested the Director of Selective Service to intercede in his behalf and take an appeal to the President to avoid an injustice. No action was taken and on May 10, 1945, he received an order to report for induction on May 21, 1945. He failed to report and was thereafter arrested and indicted on July 16, 1945. On July 28, 1945, he was appointed as company servant and presiding minister of the Waukegan, Illinois, company of Jehovah's witnesses. His case was set for trial before the United States District Court at Chicago on November 15, 1945. Mr. Adams

presented his case in detail to the Director of Selective Service. When the case was called on November 15, 1945, the Assistant United States Attorney moved for a postponement to permit a review by National Headquarters of Selective Service, looking to a Presidential appeal. On February 14, 1946, Mr. Adams was mailed notice of Class IV-D by the President. In view of such action the United States Attorney moved for dismissal of the indictment, which was ordered by Judge Campbell on February 27, 1946.

(2) Francis H. Clanton registered with Local Board No. 1, Jacksonville, Illinois, October, 1940. He claimed classification as a minister in Class IV-D when filing his questionnaire. He filed documentary evidence showing he served as a minister of the local congregation of Jehovah's witnesses. He had been one of Jehovah's witnesses since 1938. The local board refused to recognize his claim but placed him in Class IV-E. He held thereafter Class 1, 1-H, 1-A, and on appeal to the board of appeal, IV-E on June 23, 1942. On September 25, 1942, he was directed to report for work of national importance. Failing to do so, he was arrested, tried and sentenced on January 18, 1943, to serve a year and a day imprisonment. Upon release in November, 1943, he entered the full-time pioneer ministry. The local board thereafter placed him in Class 1-A. Upon appeal he was given Class IV-D in June, 1944.

(3) Charles M. Clayton registered with Local Board No. 3, Welch, West Virginia, December 23, 1942. He filed his questionnaire February 18, 1943, claiming exemption and IV-D classification and showing that he was a full-time pioneer minister and had been since May 8, 1939. He filed documentary proof of his ministerial status with the questionnaire. The local board refused to recognize his claim and placed him in Class 1-A on April 19, 1943. He appeared for a hearing before the board on April 29, 1943. Being

refused a reclassification he appealed, stating that he had never been informed of the action taken by the local board following his personal appearance. The local board requested additional information concerning his claim and he filed a statement on June 7, 1943, giving a complete history of his ministerial background and claim, including therewith many affidavits from others concerning his status. On July 1, 1943, the board of appeal affirmed the 1-A classification. He was thereafter directed to report for induction on July 27, 1943. He failed to report. Upon the trial of his case on January 24, 1944, he was convicted. He was sentenced to *ten days* imprisonment and placed in the custody of the Attorney General. The reason he was given only ten days sentence was because the district judge in pronouncing sentence reviewed the draft board file and reached the opinion that Clayton should have been exempted as a minister of religion. Following the service of his sentence upon discharge from custody, Clayton requested the local board to reopen his case and honor him with Class IV-D. He supplied the board with pertinent portions of Judge Moore's remarks at the time of pronouncing sentence. On September 26, 1944, he was accepted upon a preinduction physical examination. On October 9, 1944, he was again placed in Class 1-A. He filed statement of appeal, supported by affidavits from a number of ministers. On December 12, 1944, he was mailed advice showing that the board had affirmed the 1-A classification. On December 22, 1944, the local board informed him that the classification was by the local instead of the board of appeal and that his file was at that time being transmitted to the board of appeal. On February 19, 1945, the board of appeal affirmed the 1-A classification. On the same date the President took an appeal in his behalf and subsequently rendered a IV-D classification to him on March 8, 1945.

(4) Robert K. Deysher registered with Local Board No. 3, Reading, Pennsylvania, October, 1940. He filed his

questionnaire in February, 1941. In May, 1941, he was classified by the local board in I-A and granted a personal appearance. At the personal appearance he discussed his ministerial status with the local board and was thereafter placed in Class IV-D. On June 30, 1941, he was reclassified to IV-E. When he appeared before the board, he was informed that the IV-D classification had been a "typographical error". The IV-E classification was affirmed by the board of appeal on September 15, 1941. He was ordered to report for assignment to a civilian public service camp on December 9, 1941. He was sentenced to eighteen months' imprisonment on January 15, 1942. Upon his release from prison, the local board again processed him for induction. His order to report for induction on September 28, 1943, was postponed, due to his having entered full-time pioneer ministry. His case was thereupon reopened and he appeared before the local board on October 18, 1943, thoroughly discussed his ministerial status and filed additional documentary evidence. As a result of the hearing and examination of the additional evidence, the local board placed him in Class IV-D on November 16, 1943.

(5) Garland P. Flythe registered with Local Board No. 1, Courtland, Virginia, October, 1940. He claimed exemption and classification as a minister. He was appointed as presiding minister of the Franklin, Virginia, colored Company of Jehovah's witnesses on November 10, 1942. In 1943 he was placed in Class I-A, whereupon he appeared before the local board and discussed his ministerial status. Upon appeal, his I-A classification was affirmed. Upon failing to report for induction he was sentenced to two years' imprisonment on June 6, 1944. Upon release from prison he resumed his ministerial status as minister as aforesaid. He was thereafter ordered by his local board to report for a pre-induction physical examination on June 12, 1946. Upon such examination he was accepted for training and service by the

armed forces. On June 25, 1946, he was again placed in Class I-A, which represented a reclassification from IV-A given him upon his release from prison. He requested a personal appearance pursuant to the Regulations. The local board, in defiance of the Regulations, denied him the personal appearance. Upon seeing the chairman of the board personally, he was again denied personal appearance. Upon his writing to the State Director, his request was granted and he appeared and discussed his classification and produced documentary evidence for filing with the board. The local board denied his IV-D claim, and the board of appeal, on October 7, 1946, continued him in Class I-A. Thereafter, the President, upon an appeal taken by the Director of Selective Service, rendered the IV-D classification.

(6) Joe T. Gibson registered in July, 1943, with Local Board No. 5, High Point, N. C., and on August 12, 1943, filed questionnaire claiming exemption and IV-D classification. He had been active as one of Jehovah's witnesses since January, 1939. He had been serving as a full-time pioneer minister since June, 1943, and as the presiding minister of the local congregation of Jehovah's witnesses since July, 1943. He filed proof of his ministry with his questionnaire. On September 9, 1943, the local board placed him in Class IV-E inasmuch as he filed a special form for conscientious objector. He timely appealed. Thereafter an agent of the FBI visited him and was informed that his exclusive claim was as a minister under Section 5 (d) of the Act. The board of appeal, on December 28, 1943, reclassified him to I-A. He was thereafter directed to report for induction on January 20, 1944. Upon trial for failure to report for induction Gibson's denial of IV-D was accounted for by the clerk of the local board solely on the ground that he had no affirmative evidence in his file that he performed marriages and conducted burial services. The clerk stated that there was not a scintilla of evidence to contradict his

ministerial claim. The court said he believed Gibson was entitled to Class IV-D, but he was bound by the *Falbo* decision of the Supreme Court. Gibson was accordingly sentenced to serve two years in prison. Upon his release in September, 1945, the local board placed him in Class IV-E, continued him therein following a personal appearance, and the board of appeal affirmed. Upon his appeal to the Director of Selective Service, the local board reclassified him to IV-F on November 27, 1945, due to his still being under the jurisdiction of the Board of Parole. On February 6, 1946, the local board reopened his case and placed him in Class IV-E. Upon personal appearance he filed considerable evidence of his ministerial status. On February 27, 1946, he was continued in IV-E. On April 10, 1946, he was continued by the board of appeal in IV-E. The Director of Selective Service thereupon took an appeal to the President in his behalf. Notice of classification in IV-D by the President was mailed to Gibson on June 5, 1946.

(7) Howard M. Hilborn registered with Local Board No. 251, Los Angeles, California, February 14, 1942. He filed questionnaire claiming exemption and classification in IV-D as a minister. He filed documentary evidence showing his ministerial status. In June, 1942, the local board placed him in Class I-A. He was continued therein following his personal appearance. This classification was affirmed by the board of appeal. He failed to report for induction on December 1, 1942, and was thereafter proceeded against and sentenced to a term of one year in prison in February, 1943. While in prison he was placed in class I-A by the prison panel board, October, 1943. He was released on December 25, 1943, and the local board, contrary to the Regulations, without giving him an opportunity of a personal appearance or appeal, sent him an order to report for induction about a week later. He endeavored to have his case reopened to permit him to appeal but the clerk informed him he had

no such right. However, he filed information as to his ministerial status showing that he had been one of Jehovah's witnesses since April, 1941, and a full-time pioneer minister since October 12, 1942. Upon calling upon the chairman of the local board, his induction was withdrawn and Class IV-D mailed to him on January 25, 1944.

(8) Charles K. Honaker registered on February 16, 1942, with Local Board No. 1, Charleston, West Virginia. He was a student of Jehovah's witnesses at the filing of his questionnaire and did not claim to be a minister. He had been associated with Jehovah's witnesses all his life but did not consecrate until July, 1942. On October 12, 1942, he was appointed as a full-time pioneer minister. The local board placed him in Class I-A on July 23, 1942. He was continued therein by the board of appeal on September 4, 1942. He was ordered to report for induction on September 19, 1942, and failed to report, because the local board had refused to consider the evidence he filed concerning his ministerial status. He was subsequently tried and sentenced to serve 2½ years' imprisonment in December, 1942. The Fourth Circuit Court of Appeals affirmed the conviction on May 4, 1943 (135 F. 2d 613), holding that the draft board did not arbitrarily classify Honaker. Upon release from prison he resumed his full-time ministry. The local board again refused to recognize his ministerial status but, on appeal, the board of appeal placed him in Class IV-D in October, 1945.

(9) Floyd E. Hull registered with Local Board No. 2, Somerset, Ohio, July 11, 1941. He filed questionnaire on August 20, 1941, claiming classification in IV-D as a minister of religion. He had been one of Jehovah's witnesses since November, 1935. He was appointed as a full-time pioneer minister on September 1, 1941. He was placed in Class I-A-O by the local board on September 19, 1941. The board of appeal affirmed the classification in December, 1941. He requested a reconsideration of his case and, on

March 20, 1942, he received another I-A-O classification. He endeavored to appeal but was denied the right. He was thereafter ordered to report for induction on April 21, 1942. He did not appear. Thereafter the local board sent him an occupational questionnaire to fill out and return in August, 1942. Apparently the local board eventually permitted the appeal from the I-A-O classification given on March 20, 1942, for he received notice of classification by the board of appeal into IV-E on February 16, 1943. While his case was still before the board of appeal in December, 1942, he filed considerable additional evidence of his ministerial activity and again requested IV-D classification. During 1943 the local board sent various notices to Hull to respond for induction but for various reasons the notices were defective. One of these was an order sent to Local Board at Lawrenceburg, Indiana, to assign Hull to a civilian public service camp. That local board objected to so doing because it recognized Hull as a minister entitled to Class IV-D and wrote to the State Director at Indianapolis concerning the matter. (See opinion of the Seventh Circuit Court of Appeals in a later case where Hull's habeas corpus was affirmed, 151 F. 2d 633.) He was thereafter again ordered to report to a camp and declined. Upon trial in July, 1944, and August, 1944, Hull agreed to report to the camp, after the court found him guilty and offered to suspend his sentence of five years and put him on probation with the understanding that he would so report. It was understood that he would report and file application for habeas corpus. He reported to the camp on September 28, 1944, and thereafter instituted a civil action by filing petition for writ of habeas corpus. On February 9, 1945, Hull was discharged from custody. (61 F. Supp. 732) An appeal was taken from the judgment. The judgment was affirmed by the Seventh Circuit Court of Appeals on November 6, 1945. (151 F. 2d 633) There the Court said: "We have serious doubt that there was any justification for the Board's refusal origi-

nally to classify relator in 4-D. Whatever be thought, however, of the Board's original action in this respect, there can be no question but that subsequent proof conclusively demonstrated that he was entitled to such classification."

(10) Charles V. Hultquist registered with Local Board No. 5, Cranford, New Jersey, February 16, 1942. He had been one of Jehovah's witnesses since 1939 and a full-time pioneer minister since April 1, 1942, at the time he filed his questionnaire. In the questionnaire he filed additional proof of his ministry. He was placed in Class IV-E by the local board. He filed a copy of his ordination certificate with the local board and appealed. Upon reconsideration the local board placed him in Class I-A. The board of appeal affirmed. In October, 1942, he was directed to report for induction. Upon refusing to do so he was tried and sentenced to serve three years' imprisonment in March, 1943. Upon release in February, 1945, he was given a notice of classification *dated June 27, 1944*, by the prison panel board. He had had no right of appeal therefrom. On April 30, 1945, he filed information with his local board requesting IV-D classification, and showing that he had resumed his full-time ministry. On April 28, 1945, the armed forces accepted him upon a preinduction physical examination. He was ordered to report for induction on May 31, 1945, thereby being denied all procedural rights under the Act and Regulations. The matter was brought to the attention of the Director of Selective Service, who instructed the local board to cancel the induction and reclassify him in harmony with the Regulations. He was thereafter placed in Class I-A by the local board. This was affirmed by the board of appeal on October 2, 1945. On a consideration of his case by the Director of Selective Service, he was given a Presidential IV-D classification in March, 1946.

(11) Henry D. Kelly registered with Local Board No. 178, Van Nuys, California, June 30, 1942. He had been associat-

ed with Jehovah's witnesses since 1937 and served as a full-time pioneer minister since October 1, 1941. He requested exemption as a minister in Class IV-D, when he filed his questionnaire, December 12, 1942. He supplied the board conclusive and extensive evidence of his ministry. The local board placed him in Class IV-E on March 17, 1943. Following a personal appearance he was continued therein. The board of appeal affirmed on May 22, 1943. He failed to report for final-type physical examination on August 7, 1943, and was, on November 8, 1943, sentenced to serve a year and a day imprisonment. He immediately resumed his full-time ministry upon release in August, 1944. He was designated as the presiding minister of the North Hollywood Unit of Jehovah's witnesses on May 21, 1945. On August 9, 1944, he was again placed in Class IV-E by the local board and continued therein following a personal appearance. The board of appeal reclassified him to I-A on May 22, 1945. He endeavored to get the local board to reopen his case and consider the new information about his appointment as presiding minister. The local board declined to reopen. He was ordered to report for induction on July 13, 1945. The Director of Selective Service was asked to take an appeal to the President. Accordingly, on October 15, 1946, the President rendered a IV-D classification.

(12) Clarence W. Kruse registered in October, 1940, with Local Board No. 1, Shelby, Montana. In February, 1941, he filed questionnaire claiming exemption and IV-D classification. He had been one of Jehovah's witnesses since 1935. In late February, 1941, he was placed in Class I-A, later changed to Class IV-E. He appealed and the board of appeal denied his claim for exemption and reclassified him to I-A merely because his name did not appear on a certified official list. He was thereafter ordered to report for induction on September 10, 1941. However, this was can-

celed and the board of appeal reconsidered the case. Thereafter he appeared before a Hearing Officer of the Department of Justice and thoroughly discussed his ministerial activity and filed considerable documentary evidence. The board of appeal placed him in Class IV-E. On October 29, 1942, he was ordered to report for assignment to a civilian public service camp on November 23, 1942. He failed to appear and was thereafter sentenced to serve a term of imprisonment on April 23, 1943. He had at that time been serving as a full-time pioneer minister for six months. Upon his release in February, 1944, the local board reopened his case and on March 23, 1944, placed him in Class I-A. Following a personal appearance he was continued therein and on June 10, 1944, was reclassified to IV-E by the board of appeal. He was then ordered to report for assignment to a camp on August 25, 1944. Upon instruction of the Selective Service National Director the local board placed him in Class IV-D in October, 1944. The local board chairman said, however, that he would see to it that the IV-D was not allowed to stand. Early in 1945 the local board again placed him in Class I-A, and ordered him to take a preinduction physical examination on April 13, 1945. In May, 1945, he was placed in Class II-A(F). The local board, on May 18, 1945, again returned to him his proper classification of IV-D.

(13) Robert W. Mattson registered in October, 1940, with Local Board No. 1, Central City, Nebraska. He was not active at the time as a minister of Jehovah's witnesses. He was placed in Class I-A on February 20, 1941. On August 23, 1941, he was assigned as a pioneer minister. On September 29, 1941, he requested Class IV-D. Upon appeal he was retained in Class I-A. Not reporting for induction on February 10, 1942, he was sentenced to serve three years' imprisonment on January 15, 1943. On February 3, 1945, he was released from prison and was placed in Class IV-E. He

was allowed a personal appearance on February 22, 1945, at which time he called attention to the information on file concerning his ministerial status. Additional information was requested. Upon receiving an affidavit dated February 27, 1945, from the Watchtower Society he filed this with the local board and was favored with Class IV-D.

(14) Howard R. Miller registered with Local Board No. 103, Daly City, California, in July, 1942. He had been one of Jehovah's witnesses all his life and had served as a full-time pioneer minister since July 1, 1939. He filed questionnaire on February 3, 1943, claiming exemption and IV-D classification. He filed copy of his ordination certificate and considerable other documentary proof concerning his ministerial activity. He took a physical examination on February 23, 1943. On the same date he appeared before the local board and discussed his case with the members and filed a statement summarizing his work. He was placed in Class I-A on March 4, 1943. He was continued after another hearing in Class I-A and appealed on March 24, 1943. He filed a comprehensive statement of appeal. On May 4, 1943, he was continued in Class I-A by the board of appeal. He failed to report for induction on September 8, 1943, and was thereafter, on November 4, 1943, sentenced to serve two years' imprisonment. Upon his release in March, 1945, he resumed his full-time pioneer ministry. On August 28, 1945, he was called to the Headquarters of Jehovah's witnesses at Brooklyn, New York, to serve full-time there. On November 14, 1945 (after having remained in Class IV-F given him by the prison panel board while in prison) he was reclassified to I-A by his local board. He mailed a statement of appeal to his local board. On March 13, 1946, he was continued in I-A by the board of appeal. Upon an appeal being taken by the Director of Selective Service, the President placed him in Class IV-D on May 29, 1946.

(15) Henry O. Murphy registered February, 1942, with

Local Board No. 1, Ballinger, Texas. He filed questionnaire claiming exemption and classification in IV-D. The local board placed him in Class I-A and, following a hearing, in Class I-A-O. Such classification was affirmed upon appeal. Early in 1943 he was ordered to report for induction. Failing to do so, he was sentenced to serve a year and a day imprisonment on October 4, 1943. He was given Class IV-E by the prison panel board. Upon release from prison, no action was taken concerning reopening his reclassification. On November 1, 1944, Murphy became a full-time pioneer minister. He called this to the attention of the local board, requesting a reclassification to IV-D. Because his name did not appear on a certified list this was denied him. However, in January, 1946, the local board reopened his classification and placed him in Class IV-D.

(16) Vernon G. Olson registered with Local Board No. 44 at Petaluma, California, on June 30, 1942. He had been one of Jehovah's witnesses since 1937 and had been serving as a full-time pioneer minister since April 19, 1939. He called attention to this when he filed his questionnaire and claimed IV-D classification. On March 27, 1943, he was placed in Class I-A by the local board, in spite of the conclusive evidence filed by him as to his ministerial status. On June 15, 1943, the board of appeal affirmed the classification. He was ordered to report for induction on September 16, 1943. He failed to report. On November 15, 1943, he was sentenced to serve two years' imprisonment. On Conditional Release in April, 1945, he resumed his pioneer ministry. On July 2, 1945, he was again placed in Class I-A. On July 28, 1945, he was reclassified to IV-F by the local board. On March 1, 1946, the local board placed him in Class I-A-O. At a personal appearance he discussed his ministerial status with the local board and filed a number of affidavits from others. Upon continuation by the local board in Class I-A-O he filed a four-page statement of appeal. On June 19, 1946, the board of appeal placed him

in Class I-A. On August 18, 1946, the President placed him in Class IV-D.

(17) Donald E. Stull registered with Local Board No. 2 at Great Falls, Montana, October, 1940. He had been one of Jehovah's witnesses since April, 1941, at the time he filed his questionnaire in May, 1941. He claimed classification as a minister in IV-D. The local board placed him in Classes I-A, I-H and I-A, respectively, the latter classification being in January, 1942. He was continued in such classification by the local board after filing special form for conscientious objector. The board of appeal classified him in IV-E on November 5, 1942. Upon his failure to report for induction on February 3, 1943, he was sentenced to one year's imprisonment in November, 1943. Upon release in August, 1944, he resumed his full-time ministry (to which he had been assigned in April, 1942) and filed additional information relative thereto with the local board. The local board placed him in Class I-A on October 3, 1944. The board of appeal affirmed in November, 1944. However, in view of the fact that the classification by the board of appeal was not unanimous, he had an automatic appeal to the President. Upon such appeal, the President placed him in Class IV-D in January, 1945.

(18) Thomas H. Stull registered with Local Board No. 1, Summersville, West Virginia, February 14, 1942. He filed questionnaire claiming exemption and classification as a minister of religion in IV-D. He showed that he had been one of Jehovah's witnesses since 1935 and a full-time minister since January 1, 1942. He supported his claim with documentary evidence. The local board denied his claim and placed him in Class I-A on June 22, 1942. The board of appeal affirmed on December 9, 1942. He was accepted upon a physical examination on December 9, 1942. He was ordered to report for induction on January 2, 1943. Not reporting, he was arrested on January 13, 1943. He was

released on February 15, 1943, on habeas corpus. The State Director thereupon ordered his classification reopened by his local board. The local board declined to do so. The case was transferred to Local Board 2, Lewisburg, West Virginia. That board placed him in Class I-A on March 26, 1943, allowed him a personal appearance on April 8, 1943, and placed him in Class IV-D on April 10, 1943. Upon his file being returned to his own local board, the classification was reopened and he was, upon appeal to the board of appeal, again placed in Class I-A on July 28, 1943. In January, 1945, he was placed in Class IV-D by the President.

(19) Harold T. Watts registered with Local Board No. 1, Lewistown, Pennsylvania, October, 1940. He had been one of Jehovah's witnesses since 1934, had served as presiding minister of the local congregation since December, 1938, and a full-time pioneer minister since March 1, 1942. He claimed exemption and classification as a minister in Class IV-D. He was denied exemption by both the local board and the appeal boards. He declined to report for induction and was subsequently sentenced to serve two years' imprisonment on March 18, 1943. After his release from prison he was accepted by the armed forces upon a preinduction physical examination on December 28, 1944. While in prison he had been placed in Class IV-E in June, 1944, by the prison panel board. On January 15, 1945, he filed considerable additional documentary evidence as to his ministerial status and requested ministerial Class IV-D. The local board refused to take any action whatever. The State Director refused to direct the local board to reopen and reclassify Watts. Upon the classification given him in prison, from which he had no appeal, he was ordered to report for assignment to a civilian public service camp on February 16, 1945. Upon bringing the matter to the attention of National Headquarters of Selective Service, the local board reopened and reclassified him to IV-E on March 15, 1945. Upon appeal, the board of appeal reclas-

sified him to I-A on April 4, 1945. He was again ordered to report for induction on April 23, 1945, but it was canceled and the board of appeal again classified him to IV-E, May 17, 1945. The Director thereupon took an appeal to the President, resulting in Class IV-D by the President on August 7, 1945.

(20) George A. Williams registered with Local Board No. 1, Burlington, N. C., September 14, 1943. He had been one of Jehovah's witnesses since 1935 and a full-time pioneer minister since January 1, 1943. He claimed exemption and IV-D classification, filing with his questionnaire much corroborative evidence as to his ministry. On October 26, 1943, the local board placed him in Class IV-E. On April 4, 1944, the board of appeal placed him in Class I-A. Thereafter he was ordered to report for induction. Failing to do so, he was arrested and was brought to trial on September 25, 1944. The jury found him guilty. Sentence was deferred until November 6, 1944. At that time Judge Johnson Hayes sentenced him to two years but placed him on two years' probation. At the conclusion of his probation period, he was placed in Class IV-D.

III

Cases indicating prejudice by draft boards and where due process was denied by said boards.

(1) Thomas Balogh registered with Local Board No. 194, New York City, on March 26, 1945. In his questionnaire he showed he was a part-time minister and engaged in secular work part-time to support himself. He claimed exemption as a minister of religion. While his case was pending before the local board it was referred to the advisory board and theological panel of the New York Headquarters of Selective Service. The panel board applied orthodox standards in recommending the rejection of his claim for exemption. The local board later gave Balogh a hearing where the members of the board prejudicially stated that they would not classify any one of Jehovah's witnesses as a minister of religion. The statement of the local board and the illegal process followed by the theological panel board was held by the Second Circuit Court of Appeals to be a violation of Balogh's rights to procedural process, requiring a dismissal of the indictment. (*United States* v. *Balogh*, 157 F. 2d 939) The Government petitioned for writ of certiorari. *United States* v. *Balogh*, No. 800 October Term 1946. Certiorari was granted and the judgment of the Circuit Court of Appeals was vacated on February 3, 1947, because of the applicability of the decision of this Court in *Falbo* v. *United States*, 320 U. S. 549. (67 S. Ct. 625; rehearing denied 67 S. Ct. 633) The judgment of conviction in the *Balogh* case was ordered affirmed because he failed to exhaust his administrative remedies.

(2) Ralph H. Cahoon registered with Local Board No. 9, at Houston, Texas, October 9, 1943. He showed in his questionnaire that he had been serving as a minister since August, 1936, and that he worked part-time as a clerk but that the secular work did not interfere with his min-

isterial service. He furnished considerable documentary proof of his ministerial activity. There was no evidence whatever in his file to dispute his claim. On October 28, 1943, he was placed in Class I-A. Following a hearing before the board, his classification was changed to I-A-O. He thereupon appealed to the board of appeal. His case was referred to a Hearing Officer of the Department of Justice who reported to the Selective Service that "undoubtedly registrant is a minister within the meaning of the law. He performs all the essential functions of a minister." When Cahoon's case got into the courts (due to his refusal to report for induction) the chairman of the board of appeal stated that there was no evidence in the file to indicate that Cahoon was not a minister, but that the appeal board did not think he was a minister. The vice-chairman of the board of appeal testified that several years before he had prepared a brief on Jehovah's witnesses based on a book he had bought in St. Louis and that each member of the board of appeal was given a copy of the brief as a guide in classifying all of Jehovah's witnesses. Such brief had been prepared two years before Cahoon was classified. The board of appeal placed him in Class I-A. When he was ordered to report for induction, he complied, but declined to submit to induction. He was sentenced to serve thirteen months' imprisonment on March 1, 1945. Judgment was affirmed by the Fifth Circuit Court of Appeals on January 9, 1946. (152 F. 2d 752; rehearing denied April 25, 1946, 155 F. 2d 150) Certiorari was denied October 14, 1946. (67 S. Ct. 57; rehearing denied January 20, 1947, 67 S. Ct. 619) On a return of the mandate, the district judge suspended the sentence previously imposed. *March 15, 1947, the local board gave him IV-D.*

(3) William M. Estep registered with Local Board No. 4, Canonsburg, Pennsylvania, June 30, 1942. He claimed exemption and IV-D classification and filed supporting proof of his claim. The local board placed him in Class I-A.

The board of appeal affirmed. He reported for induction but declined to submit to induction. He was sentenced to serve five years' imprisonment on December 20, 1944. The Third Circuit Court of Appeals affirmed on July 6, 1945. (150 F. 2d 768) This Court reversed and remanded the case on February 4, 1946. (327 U. S. 114) On trial in the district court it was shown that the local board refused to incorporate in Estep's file information filed by him, so that it would be available to the board of appeal, and it refused to reopen his case and consider the additional information in proof of his ministry. In order to show the prejudicial and arbitrary action of the local board in denying Estep his rights under the Act and Regulations, reference is made to pages 9-30 of the record in the *Estep* case, which is the cross-examination of the local board clerk. After the return of the mandate to the district court, the President of the United States placed Estep in Class IV-D and the Government moved to dismiss the case.

(4) Nick Falbo registered with Local Board No. 11, West Newton, Pennsylvania, October, 1940. He had been one of Jehovah's witnesses since 1930 and a full-time pioneer minister since September 1, 1940. He filed his questionnaire, August 23, 1941, requesting IV-D classification as a minister of religion. On August 25, 1941, he was placed in Class I-Tentative and on January 19, 1942, in Class I-A. He duly appealed and was reclassified by the board of appeal in IV-E on June 17, 1942. He was again placed in Class IV-E by the local board on July 15, 1942. He was accepted upon a final-type physical examination, thus exhausting his administrative remedies. He failed to report for assignment to a civilian public service camp on September 2, 1942, and was thereafter arrested, tried and sentenced to serve five years on December 1, 1942. The Third Circuit Court of Appeals affirmed (135 F. 2d 464) and this Court affirmed. (320 U. S. 549) Note that upon personal appearance when Falbo was first classified, the chairman

of the local board stated, "I do not have any damned use for Jehovah's witnesses." (Transcript of the Record 33, No. 73 October Term 1943) This statement was referred to by Mr. Justice Murphy in his dissenting opinion. This Court in effect reversed the *Falbo* decision in its opinion in *Estep* v. *United States*. The facts in the case of *Dodez* v. *United States* (No. 86, October Term 1946) are identical with the facts in the *Falbo* case. The Court was requested to reverse the *Falbo* decision in the *Dodez* case on the ground that it misapprehended the Regulations in the *Falbo* case. The Court declined to so hold. (See the opinion in *Dodez* v. *United States*, 67 S. Ct. 301.)

(5) Verna L. Garland registered with Local Board No. 1, Leon County, Texas, in October, 1940. He claimed classification as a minister of religion in IV-D. The local board placed him in Class IV-E on May 16, 1941. On January 20, 1942, he was placed in Class I-A, on oral testimony of neighbors of Garland according to the local board. Neither this testimony nor testimony given by Garland on a personal appearance was reduced to writing, as required by the Regulations, for the benefit of the board of appeal in passing on the same information considered by the local board. The board of appeal affirmed. He failed to report when ordered to report for induction and was subsequently sentenced to serve three years' imprisonment on November 20, 1942. While in prison he was accepted upon a preinduction physical examination, May 19, 1944. Upon release in 1945 he was again placed by the local board in Class I-A, which was affirmed by the board of appeal. No preinduction physical examination was given him prior to the order to report for induction on June 11, 1945. He was again tried upon refusal to report for induction and on March 6, 1946, sentenced to serve three years' imprisonment. His case was affirmed by the Fifth Circuit Court of Appeals on December 3, 1946. (158 F. 2d 93) The prejudice of the local board

against the entire organization is shown in that it stated that it would not classify any of Jehovah's witnesses as ministers.

(6) Floyd E. Hull. For a summary of his dealings with the local board, registration, classifications, etc., reference is made to pages 23 to 25 of this appendix. Particular attention is here drawn to the fact that the local board in Lawrenceburg, Indiana, complained of the prejudice and arbitrary action taken by Hull's original local board at Somerset, Ohio, since all evidence showed that Hull was engaged full-time as a minister. The Seventh Circuit Court of Appeals, in affirming the judgment of the District Court in discharging Hull on a writ of habeas corpus (61 F. Supp. 732) intimated that prejudice and arbitrary action were in evidence as indicated by the closing remarks of the opinion, which see, 151 F. 2d 633.

(7) Willian T. Klopp registered with Local Board No. 4, Middletown, Ohio, October, 1940. He claimed ministerial exemption and classification when filing questionnaire June 12, 1941. He was placed in Class III-A due to being married. On November 15, 1943, he was placed in Class IV-E. On a personal appearance on November 29, 1943, notes, containing, false and distorted statements to the prejudice of Klopp, were taken by the secretary of the local board and subsequently presented to the board of appeal. He requested a reopening of his case in order that the inaccurate and prejudicial report might be corrected. This was denied. His IV-E classification was affirmed by the board of appeal and he was subsequently ordered to report for assignment to a civilian public service camp. Failing to do so he was arrested and thereafter sentenced to serve a term of five years and pay a fine of $3500. His case was affirmed by the Sixth Circuit Court of Appeals on March 26, 1945. (148 F. 2d 659) This case is identical in every respect to the case of *Dodez* v. *United States*. He had been accepted

upon a preinduction physical examination prior to his assignment to go to the camp, thus exhausting his remedies. At the time he was ordered to report no physical examinations were given assignees at the civilian public service camps. Therefore the rule of *Dodez* v. *United States* applies. (67 S. Ct. 301)

(8) Louis D. Smith registered with Local Board No. 68, Columbia, South Carolina, December 24, 1942. He had been active as a minister since September, 1938, and requested classification in IV-D. He filed considerable evidence as to his ministry, all of which the local board ignored. He was placed in Class I-A on April 2, 1943. He was refused the right to discuss his case orally at a subsequent personal appearance. He was continued in Class I-A-O following the personal appearance. He requested another personal appearance, at which time he was permitted to discuss extensively his ministerial status and preparation for the ministry. The chairman of the local board (at Smith's trial in the district court) testified that the local board considered all this oral evidence offered at this concededly extensive hearing. The local board, contrary to the Regulations, failed to reduce to writing this oral evidence, thus depriving the board of appeal of the information considered by the local board in arriving at its conclusions. This in spite of his offer at the hearing to produce an abundance of additional written evidence, which the board informed him positively was not necessary. Smith was informed at the conclusion of the hearing that his I-A classification would be continued. Upon appeal the I-A was continued by the board of appeal, but as there was a dissenting vote, his case went to the President, who continued him in Class I-A on August 8, 1943. Smith realized for the first time that the local board had falsely told him that he did not need to submit additional written evidence to corroborate his claim and that the board of appeal and the President did not have the benefit of the extensive oral testimony he had

given at the hearing. He thereupon prepared elaborate statements and obtained considerable affidavits from others who testified to his ministerial status and showed that he was at that time serving as a full-time pioneer minister. The Government Appeal Agent requested the local board to reopen and reconsider Smith's classification, inasmuch as it had denied him the right to file the proof before. The request was arbitrarily denied. Upon Smith's reporting at the board and requesting a reopening, it was also denied him. The local board arbitrarily and capriciously held that this was not new evidence sufficient to warrant a reopening, in view of previous illegal withholding of the same evidence from the appeal agencies of the Selective Service System. Smith was thereafter ordered to report for induction. He reported but declined to submit, but was nevertheless inducted. He was thereafter released from the army, was retried, found guilty, his case affirmed upon appeal, and reversed by the Court. (See 53 F. Supp. 583; 148 F. 2d 288; 327 U. S. 114) He was again tried in the district court and found guilty and his case reversed by the Fourth Circuit Court of Appeals on July 29, 1946. (157 F. 2d 176) He is again awaiting trial in the district court.

(9) Thomas H. Stull registered with Local Board No. 1, Summersville, West Virginia, February 14, 1942. He filed questionnaire claiming exemption and classification as a minister of religion in IV-D. He showed he had been one of Jehovah's witnesses since 1935 and a full-time pioneer minister since January 1, 1942. He supported his claim with documentary evidence. The local board denied his claim and placed him in Class I-A on June 22, 1942. The board of appeal affirmed on December 9, 1942. He was accepted upon a physical examination on December 9, 1942. He was ordered to report for induction on January 2, 1943. Not reporting he was arrested on January 13, 1943. He was released on habeas corpus on February 15, 1943. His classification was ordered reopened by the State Director,

but the local board declined to do so. Due to the extreme prejudice manifested by his local board, the Selective Service System transferred his case and file to Greenbrier County Local Board No. 2. That board, on March 26, 1943, placed him in Class I-A. Following a personal appearance, the local board for Greenbrier County reclassified him to IV-D on April 10, 1943. The file was thereupon returned to his local board at Summersville. Without notice to Stull, the State Director, due to prejudice generated by the Summersville local board, appealed his case to the board of appeal, which again placed him in Class I-A on July 28, 1943. On October 4, 1943, Stull was ordered to report for induction on October 15, 1943. He declined to do so. Upon trial before Judge Ben. Moore, he was found guilty, but the court felt that he was exempt as a minister and the court sentenced Stull to *ten days* only. The President placed him in Class IV-D, January, 1945. The local board showed extreme prejudice. Stull was acquainted with two members of the local board, one of whom had stated that he was prejudiced against Jehovah's witnesses and would do all that he could to put every one of them into the penitentiary, another member had previously demonstrated his extreme prejudice and hatred of Stull and of Jehovah's witnesses by participating, as a conspirator, with one Martin Catlette, in a mob assault against Stull. (*Catlette* v. *United States*, 132 F. 2d 902, 907) The attack had been made because Stull and his fellow ministers had refused to discontinue preaching the gospel.

(10) William A. Wells registered with Local Board for Leon County, Texas, June 30, 1942. He has been one of Jehovah's witnesses since November, 1939. He claimed ministerial classification when filing questionnaire in November, 1942. The board placed him in Class I-A on January 19, 1943. He had one or two hearings, at neither of which did the local board, in accordance with the Regulations, reduce to writing the oral testimony offered by Wells. Upon appeal he was continued in Class I-A on February 3,

1943. Upon his refusal to report for induction on June 18, 1943, he was arrested and on November 18, 1943, sentenced to serve two years' imprisonment. Upon release he was given a preinduction physical examination, October 12, 1945. No record appears of his having been reclassified by the local board after release, but his case was sent to the board of appeal, where he received Class I-A on December 4, 1945. He was ordered to report for induction on December 17, 1945. On trial, March 6, 1946, he was sentenced to three years' imprisonment. His case was affirmed by the Fifth Circuit Court of Appeals, December 23, 1946. Certiorari was denied, March 3, 1947. The prejudice of the local board against the entire organization is shown in that it stated that it would not classify any of Jehovah's witnesses as ministers.

IV

Typical cases of full-time ministers denied exemption and IV-D classification.

(1). Vincent C. Arpaia registered with Local Board No. 8-A, New Haven, Connecticut, August 29, 1944. He had been one of Jehovah's witnesses all his life and had been particularly active since 1938. He had been serving as a full-time pioneer minister since June 1, 1944. He filed adequate documentary proof of his ministry with his questionnaire, requesting Class IV-D. The local board denied his claim and placed him in Class I-A. He requested a personal appearance on September 25, 1944, filing therewith a copy of his ordination certificate. Because he inadvertently also said he desired his case appealed, the board denied the personal appearance and following a preinduction physical examination in December, 1944, sent his file on to the board of appeal. The board of appeal affirmed the I-A on February 15, 1945. Thereafter the State Director was requested

to instruct the local board to allow the personal appearance previously denied. This was denied, March 6, 1945. The State Director denied a renewed request on March 12, 1945. However, upon appealing the matter to the National Director the personal appearance was ordered allowed. Class I-A was again continued following the personal appearance. Upon appeal the board of appeal again affirmed the I-A. Arpaia reported for induction on August 18, 1945, but declined to submit to induction. On June 18, 1945, he was sentenced to serve two years' imprisonment. On September 27, 1946, he was released on habeas corpus by United States District Judge J. Joseph Smith. The Government did not appeal the judgment.

(2) Fenton W. Burnside registered with Local Board No. 451, Johnson City, N. Y., July 1, 1941. He had been one of Jehovah's witnesses since 1932 and was associated with the Johnson City congregation of Jehovah's witnesses. On March 1, 1942, he entered the full-time pioneer ministry. When he filed his questionnaire he claimed exemption and classification as a minister and furnished abundant proof of his ministry. The local board declined to grant his claim and placed him in Class I-A on September 24, 1941. The board of appeal affirmed such classification in May, 1942. Upon receiving notice to report for induction, he declined and, in October, 1942, he was sentenced to serve three years' imprisonment. Upon Conditional Release on January 21, 1945, he immediately resumed his full-time pioneer ministry and so informed the local board. He was accepted upon a preinduction physical examination on February 27, 1945. The local board placed him in Class I-A on March 5, 1945. Thereupon the local board requested the United States Board of Parole to suspend his parole to enable them to send him for induction. The suspension was allowed on March 29, 1945. The local board endeavored to persuade him not to appeal from the decision of the local board because he would just be wasting his time. Upon appeal, Class I-A

was affirmed by the board of appeal on March 24, 1945. He was ordered to report for induction on April 24, 1945. Failing to report, he was again brought to trial and on June 14, 1945, sentenced to serve a second term of imprisonment of three years.

(3) George W. Dodez registered on June 30, 1942, with Local Board No. 2, Orrville, Ohio. He had been one of Jehovah's witnesses since January, 1941, and a full-time pioneer minister since May 7, 1942. He claimed exemption and classification as a minister of religion in IV-D, when he filed his questionnaire on September 21, 1942. He filed with the questionnaire documentary proof of his full-time ministerial status. The local board placed him in Class I-A on November 30, 1942. He appeared before the local board on December 7, 1942, and submitted a petition signed by 44 persons stating they recognized him as a minister and that he preached regularly. The board denied him a full hearing. He was continued in Class I-A on December 7, 1942. He requested a rehearing to present additional proof. Upon this being refused he filed a statement of appeal complaining of the action of the local board as being arbitrary, capricious, prejudiced and unfair. He was placed in Class IV-E by the board of appeal on June 11, 1943. The local board therefore declined to reopen his case after he submitted an affidavit and petition showing he was presiding minister over a congregation of Jehovah's witnesses, authorized to perform marriages, baptism, funeral and other such ceremonies and that it would be a hardship on his congregation if he were taken away. He was accepted by the armed forces for training and service upon a preinduction physical examination on February 21, 1944, thus exhausting his administrative remedies. He was ordered to report for assignment to a civilian public service camp on April 21, 1944. Dodez failed to report. Upon trial, Dodez was sentenced to serve a period of five years' imprisonment on December 15, 1944. The judgment of conviction was af-

firmed by the Sixth Circuit Court of Appeals on March 18, 1946. (154 F. 2d 637) On December 23, 1946, this Court reversed the judgment and remanded the cause for a new trial. (67 S. Ct. 301) When the case was returned to the district court, the Government nol prossed the case because it was of the opinion that he was a minister.

(4) William M. Estep registered with Local Board No. 4, Canonsburg, Pennsylvania, June 30, 1942. He claimed exemption and IV-D classification and filed supporting proof of his claim. The local board placed him in Class I-A. The board of appeal affirmed that classification. When ordered to report for induction, he complied, but declined to submit to induction. He was sentenced to serve five years' imprisonment on December 20, 1944. The Third Circuit Court of Appeals affirmed the judgment on July 6, 1945. (150 F. 2d 768) This Court reversed the judgment and remanded the cause on February 4, 1946. (327 U. S. 114) On trial it was shown that the local board illegally refused to incorporate in Estep's file information filed by him so that it would be available to the board of appeal and that it illegally refused to reopen his case and consider the additional information in proof of his ministry. This Court reversed the case because Estep was "denied the opportunity to show that [the] local board exceeded . . . jurisdiction" and a new trial must be had. Upon the return of the case to the district court, the Government dismissed the case, at the instance of the Department of Justice. Estep was again given Class I-A by the local board and the board of appeal. Upon his case being appealed by the Director of Selective Service to the President, he was placed in Class IV-D.

(5) Taze H. Gibson registered with Local Board "A", El Dorado, Arkansas, on June 30, 1942. He had been one of Jehovah's witnesses since 1937 and a full-time pioneer minister since June 15, 1940. He filed his questionnaire on

October 12, 1942, claiming exemption and Class IV-D as a minister of religion. The local board denied his claim and placed him in Class I-A, on November 6, 1942. The board of appeal, on May 8, 1943, placed him in Class IV-E. The Director of Selective Service declined to appeal his case to the President. He was accepted upon a preinduction physical examination on September 22, 1943, and was again in 1944 given such examination and accepted by the armed forces. He was ordered to report for assignment to a civilian public service camp on August 21, 1944. He proceeded to such camp at Hill City, South Dakota, and remained until August 28, 1944, when he was given a physical examination and found physically acceptable. He filed additional evidence of his ministerial activity with the Camp Director and departed. He was sentenced to five years' imprisonment on February 14, 1945. The Eighth Circuit Court of Appeals affirmed on June 15, 1945. (149 F. 2d 751) This Court reversed the judgment and remanded the case for a new trial on December 23, 1945. (67 S. Ct. 301) The Government argued in this Court that Gibson was not a minister and that the draft boards did not err in denying his claim for exemption and for that reason the denial of his right to defend was harmless error. After the case was reversed and sent back to the trial court, the Government voluntarily, and inconsistent with its argument before this Court, nol prossed and dismissed the indictment in preference to going to trial on whether he was a minister. The inconsistency of the Government in this (and the *Dodez*) case is discussed in Reply Brief filed by Gibson in Number 23, October Term 1946.

(6) George R. Gutman registered on July 6, 1942, with Local Board No. 86, San Francisco, California. He had been one of Jehovah's witnesses all his life and particularly active since July, 1939. He had been a full-time pioneer minister since August 8, 1939, and a "special pioneer" minister since May 1, 1942. He filed questionnaire on Septem-

ber 11, 1942, claiming exemption and IV-D classification and filed therewith documentary proof of his full-time ministerial status. The local board placed him in Class I-A on December 10, 1942. Following a personal appearance he appealed his case. On February 10, 1943, the board of appeal affirmed the Class I-A. He failed to report for induction as ordered on May 14, 1943. On June 20, 1943, he was sentenced to serve three years' imprisonment. The federal judge absolutely ignored the fact that Gutman had been a practicing ordained minister and stated that "because you have only worked less than six months [at secular work] since you were fifteen years old, I consider you lazy and indolent." The Ninth Circuit Court of Appeals affirmed the judgment on March 7, 1944. (142 F. 2d. 555)

(7) Floyd E. Hull registered with Local Board No. 2, at Somerset, Ohio, July 11, 1941. He had been one of Jehovah's witnesses since November, 1935. He was appointed as a pioneer minister on September 1, 1941. The history of his dealings with his local board, the prejudicial and arbitrary action taken by his draft board, his trial for alleged violation of the Selective Training and Service Act and the trial of his habeas corpus proceedings are set forth in detail on pages 23 to 25 of this apprendix, to which reference is here made. Also reference is made to the opinion of the Seventh Circuit Court of Appeals in affirming the judgment of the District Court in discharging the prisoner. (151 F. 2d 633)

(8) Otto A. Jensen registered with Local Board No. 723, Valley Stream, New York, February 15, 1942. He claimed classification as a minister of religion when filing his questionnaire on May 15, 1942. He had been one of Jehovah's witnesses since 1936. On August 22, 1942, he became a full-time pioneer minister. While yet a part-time minister, and based on the information he filed with the local board as to his ministerial status as an assistant minister in the local

congregation, the local board placed him in Class IV-D on May 20, 1942. After filing with the local board on December 21, 1942, evidence of having discontinued his part-time ministerial status and having become a full-time pioneer minister, the local board, on January 8, 1943, placed him in Class IV-E, withdrawing his ministerial exempt classification. He was continued in Class IV-E following a personal appearance. The board of appeal reclassified him to I-A on August 17, 1943. He was ordered to report for induction on November 23, 1943. Upon failure to report he was, on March 27, 1944, sentenced to serve three years' imprisonment. The Second Circuit Court of Appeals affirmed the judgment on January 22, 1945. (146 F. 2d 874) Certiorari was denied. (325 U. S. 851).

(9) Frank Kluz registered with Local Board No. 45, Detroit, Michigan, on October 16, 1940. He had been one of Jehovah's witnesses since 1934. He became a full-time pioneer minister on July 23, 1941. He claimed exemption and classification in IV-D as a minister of religion. The local board denied his claim and placed him in Class I-A. The board of appeal reclassified him to IV-E. Failing to report for induction on January 6, 1943, he was sentenced to serve a term of three years' imprisonment on March 12, 1943.

(10) John M. Kulick registered with Local Board No. 254, Jackson Heights, New York City, June 30, 1942. He had been one of Jehovah's witnesses since 1935 and had served as a full-time pioneer during "sch[illegible] vacation" in 1940. He re-entered the full-time service on July 1, 1942. He filed his questionnaire and adequate proof of his ministerial status in November, 1942, claiming exemption and classification as a minister in IV-D. He was first classified in Class I-A by the local board on March 29, 1943, but this was changed by the local board to Class IV-D on April 28, 1943, following the receipt of a letter from Kulick explaining

about Opinion No. 14 of National Headquarters of Selective Service System and additional evidence of his ministerial activity. In August, 1944, the local board received a telephone message from the clerk of another local board stating that a woman was at that local board complaining about Kulick being exempted while her three sons had to serve in the armed forces. On this hearsay evidence, Kulick was arbitrarily denied his ministerial exemption and placed in Class I-A. At a personal appearance he extensively explained his ministerial work, and showed that he spent but two hours weekly in other activity. The local board illegally failed to reduce to writing the oral evidence. He was continued in Class I-A on August 31, 1944. He filed a statement of appeal. He was accepted upon a preinduction physical examination on September 11, 1944. His I-A classification was affirmed by the board of appeal on October 3, 1944. He reported for induction on November 9, 1944, but declined to submit. On May 3, 1945, he was sentenced to serve three and one-half years' imprisonment. His petition for writ of habeas corpus was denied on May 6, 1946. The Second Circuit Court of Appeal remanded the case and released Kulick. (157 F. 2d 811) The case is now before this Court on certiorari granted January 20, 1947, as No. 840, October Term, 1946.

(11) Sam McGee, Jr., registered with Local Board "A", Little Rock, Arkansas, 1942. He had been associated with Jehovah's witnesses since 1939 and had served as a full-time pioneer minister since January 16, 1940. He filed questionnaire in January, 1943, claiming exemption and IV-D classification. Upon the information filed he was placed in Class IV-D by the local board. He was then called for a physical examination and thereafter reclassified to I-A on February 17, 1943. At a personal appearance he filed a copy of his certificate of ordination and appointment as full-time pioneer minister. Following this he was continued in I-A. On June 27, 1943, Class I-A was affirmed by

the board of appeal. He was ordered to report for induction on July 29, 1943. In September, 1943, having failed to report, he was sentenced to serve two years' imprisonment. In October, 1944, he was released and again placed in Class I-A. The local board refused to recognize his ministerial status. Upon again being ordered to report for induction, he refused, and again was sentenced to serve an imprisonment of two years in April, 1945. It should be noted that the only reason this man's name did not appear on the certified official list of ministers was because he registered at about the time the practice of adding names was discontinued. The local board arbitrarily refused to classify him as a minister solely because his name did not appear on said list.

(12) James L. Nelson registered with Local Board No. 1, Butler, Missouri, June 30, 1942. He had been one of Jehovah's witnesses since 1936 and a full-time pioneer since September 1, 1941. Because the practice of adding the names of pioneers to the certified official list by National Headquarters of Selective Service was discontinued shortly after he registered, his name was not added. The local board used this as an arbitrary reason for refusing him Class IV-D. He claimed exemption and classification as a minister, giving adequate and complete proof of his ministerial status when he filed his questionnaire on September 23, 1942. The local board placed him in Class I-A on January 23, 1943. Following a personal appearance he was reclassified to IV-E on February 8, 1943, by the local board. The board of appeal affirmed the IV-E classification on March 20, 1943. The board of appeal had before it when considering his appeal the following prejudicial statement of the local board, made contrary to the Regulations: "the local board was getting their patience fairly well exhausted with this click of Jehovah's witnesses!" The local board thus showed its prejudice against all of Jehovah's witnesses as an organization. The Director of Selective Service thereafter postponed induction process in order to study the case.

While the matter was before National Headquarters the local board directed him to take a final-type physical examination. Believing the order to be improperly issued and since he had been told that the Director was considering his case, Nelson did not report. The local board reported him as a delinquent and he was thereafter brought to trial before Federal Judge M. E. Otis on June 29, 1943. Judge Otis found Nelson "not guilty", because there was no evidence to support the board's decision that Nelson was not a minister. The local board thereafter again placed him in Class I-A on August 7, 1943. He appealed therefrom and attached a copy of Judge Otis' opinion to his statement of appeal. He also attached affidavits from other ministers substantiating his ministerial claim. Upon direction of the State Director the local board reopened his classification and placed him in Class IV-D on August 28, 1943. On October 1, 1943, he was called before the local board and questioned thereafter by an agent of the FBI, who "shadowed" him in his ministerial work for several days. On January 31, 1944, five months after being given IV-D, the State Director again ordered his classification reopened by the local board and, on February 5, 1944, the local board placed him in Class IV-E. He appealed showing there was no change in his ministerial status to warrant a reopening of his classification under the Regulations. He was accepted upon a preinduction physical examination on March 30, 1944, and was thereafter continued in Class IV-E on June 19, 1944, by the board of appeal. In view of the peculiar circumstances in his case, the Director of Selective Service took an appeal in his case and on September 12, 1944, he was given Class IV-D by the President.

(13) Royal W. Rea registered with Local Board No. 1, Miami, Oklahoma, on April 6, 1943. He had been one of Jehovah's witnesses since 1938 and a full-time pioneer minister since August 1, 1941. With his questionnaire, in which he claimed exemption and IV-D classification, he filed copy

of his ordination certificate and pioneer appointment. He was placed in Class I-A by the local board on June 9, 1943. After a personal appearance on June 18, 1943, he was continued in Class I-A. He appealed for Class IV-D. The local board thereafter directed him to appear before it in October, 1943. He discussed his case orally with the board, but no record was made of such discussion for the benefit of the board of appeal, contrary to the Regulations. The board of appeal, on March 20, 1944, affirmed the Class I-A. He was accepted upon a preinduction physical examination on March 31, 1944. He reported for induction on June 27, 1944, but declined to submit to induction, thus exhausting his administrative remedies. Thereafter, on September 30, 1944, he was sentenced to serve three years' imprisonment. His case is identical to that of Estep. (*Estep* v. *United States*, 327 U. S. 114) Moreover, it is the same as *United States* ex rel. *Kulick* v. *Alexander*, No. 840, October Term 1946. After the decision in the *Estep* case, Rea applied for habeas corpus. The writ was denied. He appealed to the Fifth Circuit Court of Appeals where the order denying the writ was affirmed. (153 F. 2d 190) He applied for writ of certiorari two weeks after the decision in the *Estep* case. The petition for writ of certiorari was denied. (327 U. S. 794; rehearing denied, 327 U. S. 819) The extraordinary and unusual granting of the writ of certiorari in the cases of *Sunal* v. *Large* and *Kulick* v. *Alexander* (Nos. 535 and 840, October Term 1946) and the denial of certiorari in Rea's case is an inconsistency. See the discussion of two courts of appeals concerning the extraordinary denial of the writ of certiorari in the *Rea* case. (*Sunal* v. *Large*, 1[illegible] F. 2d 165; *United States* ex rel. *Kulick* v. *Kennedy*, 157 F. 2d 811)

(14) Alex Rinko registered with Chicago (Illinois) City Board No. 122, October 16, 1940. He had been one of Jehovah's witnesses since 1931 and a full-time pioneer minister since 1939. In March, 1941, he filed his questionnaire claiming classification as a minister. On April 18, 1941,

the local board placed him in Class I-A. Rinko filed a statement of appeal. Upon the questionnaire and additional supporting proof on file, the board of appeal reversed the local board and, on July 3, 1941, placed him in Class IV-D. His file showed that he served without charge as a minister of the North Unit of the Chicago Company of Jehovah's witnesses and regularly performed all the usual ministerial functions. On April 26, 1943, the local board reopened Rinko's classification and placed him in Class I-A-O and he was so notified on June 3, 1943. He appeared for a hearing on June 14, 1943. The local board denied a hearing completely by refusing Rinko the right to discuss his classification, to point out evidence in his file that the board overlooked and to offer additional oral testimony, all contrary to the Regulations. The local board, also contrary to the Regulations, refused to accept additional written evidence. He filed a written appeal on June 16, 1943, and sent along evidence which the local board had refused to accept. Later, on direction of the State Director, the local board accepted the written evidence and sent it to the board of appeal for consideration. He was placed in Class I-A by the board of appeal on January 11, 1944. He was accepted by the armed forces at a preinduction physical examination on February 19, 1944. On April 13, 1944, he reported for induction and was again accepted for service but declined to submit to induction, thus exhausting his administrative remedies. Thereafter he was tried before Judge W. J. Campbell without a jury at Chicago, Illinois, September 20, 1944. On October 17, 1944, Judge Campbell rendered judgment upon his finding of guilty, suspended the imposition of the sentence and placed Rinko on probation for a period of two years. He refused to commit Rinko to the custody of the Attorney General and to impose a sentence because he was of opinion that Rinko was a minister, exempt from training and service under the Act, and that the draft boards improperly classified him. An appeal was duly taken to the

Seventh Circuit Court of Appeals. In spite of the fact that Rinko had fully exhausted his administrative remedies by reporting at the induction station and refusing to be inducted, the court of appeals held that he could not defend. The court applied the *Falbo* rule and held that no defense was available to a prosecution under Section 11 of the Act. (*Rinko* v. *United States,* 147 F. 2d 1) Certiorari was denied by this Court. (325 U.S. 851. Rehearing denied, 325 U. S. 894) In spite of the denial of certiorari in the *Rinko* case this Court (the same date, May 28, 1945, that it denied rehearing on the petition for writ of certiorari in the *Rinko* case) granted certiorari in the case of *Smith* v. *United States,* 325 U. S. 846. This Court recognized that the petition for writ of certiorari in the *Rinko* case presented precisely the same question that was posed to the Court in the *Estep* case. (*Estep* v. *United States,* 327 U. S. 114, Note 15) It is highly unjust that Rinko should be convicted and should have unsuccessfully prosecuted an appeal from the conviction all the way to this Court when, on the same facts and circumstances, Smith and Estep successfully prosecuted their appeals.

(15) Theodore M. Sunal registered with Local Board No. 26, at Pittsburgh, Pennsylvania, October, 1940. He had been one of Jehovah's witnesses since 1935. When he filed his questionnaire on January 15, 1941, he did not claim to be a "minister of religion" for reasons given later, but he did ask for Class IV and showed he was engaged in ministerial work. He later filed Special Form for Conscientious Objector further clarifying his claim. He was placed in Class I-A by the local board on May 10, 1941. He submitted further documentary evidence as to his status on May 15, 1941. He had a personal appearance on June 24, 1941, following which the local board continued him in Class I-A on July 1, 1941. He appealed. He appeared before a Hearing Officer of the Department of Justice on December 30, 1941, and discussed orally his case and submitted written evi-

dence which became a part of his file for the consideration of the board of appeal. The board of appeal affirmed Class I-A on January 27, 1942. He failed to report for induction on March 19, 1942. On May 9, 1942, he was sentenced to serve two years' imprisonment. On January 1, 1944, upon his release from prison on parole, he entered the full-time pioneer service of Jehovah's witnesses. In order to support himself in the ministry, he engaged part time in secular work. On May 19, 1944, upon Sunal's complete sentence being satisfied, the local board placed him in Class I-A. Upon a personal appearance on June 9, 1944, he filed exhaustive statements, affidavits and petitions supporting his ministerial claim. His claim was again denied and he was placed in Class I-A by the local board on June 24, 1944. On July 3, 1944, he appealed and filed more evidence of his ministerial activity. He was accepted upon a preinduction physical examination on July 28, 1944. The board of appeal affirmed the 1-A classification on September 12, 1944. He reported for induction on October 25, 1944, but declined to submit to induction, thus exhausting his administrative remedies. Upon trial, he offered evidence for the purpose of establishing that the draft boards had denied him his rights under the Act. In spite of his having exhausted his administrative remedies, the Court instructed the jury that the draft board classification could not be attacked in defense to the indictment. Sunal was sentenced to serve five years' imprisonment on March 22, 1945. This was his second conviction under the Act. Petition for writ of habeas corpus was filed by Sunal on March 11, 1946. The writ was discharged by Judge Ben Moore in April, 1946. The Fourth Circuit Court of Appeals affirmed on July 29, 1946, (157 F. 2d 165) and certiorari was granted on January 20, 1947. The case is docketed as No. 535, October Term 1946.

V

Typical cases of part-time ministers denied exemption and IV-D classification.

(1) Harold E. Goodrich registered with Local Board No. 4, New Orleans, Louisiana, October, 1940. He had been one of Jehovah's witnesses since 1934. At the time of his registration he was serving as a full-time pioneer, but he had to relinquish such full-time activity on March 26, 1941. He filed questionnaire on April 24, 1941, claiming exemption and classification in IV-D. He stated he was a minister and regularly served as such. The local board placed him in Class I-A on January 23, 1942. He was continued in such classification by the board of appeal on February 13, 1942. He filed additional evidence with the local board as to his ministerial status, which the local board received on May 20, 1942, but refused to consider as meriting a reopening of his case. He declined to report for induction and was thereafter sentenced to serve a year and a day on December 10, 1942. At that time he had been serving as a full-time pioneer since October 1, 1942. Upon release from prison he resumed his full-time pioneer ministry and the local board again, on September 29, 1943, placed him in Class I-A. The board of appeal affirmed on October 29, 1943. He was accepted upon a preinduction physical examination on February 12, 1944. On March 14, 1944, he declined to report for induction and was sentenced to a term of fifty-nine months on May 22, 1944. The Fifth Circuit Court of Appeals affirmed the judgment on December 21, 1944. (146 F.2d 265)

(2) Herman H. Grieme registered with Local Board No. 2, Westwood, N. J. He was company servant and presiding minister of a congregation of Jehovah's witnesses at the time. He had been one of Jehovah's witnesses since January, 1935. He claimed exemption and IV-D classification.

The local board placed him in Class IV-E, which classification the board of appeal affirmed. He again appealed on July 14, 1941. The local board thereupon placed him in Class III-A, a dependency classification. On January 6, 1943, the local board reopened his case and placed him in Class IV-E. Following a personal appearance he was continued therein on February 5, 1943. He filed statement of appeal and the board of appeal affirmed the IV-E classification on April 13, 1943. He was accepted by the armed forces on a preinduction physical (final-type) examination on May 1, 1943, thus exhausting his administrative remedies. He did not report for assignment to a civilian public service camp on July 30, 1943. He was sentenced to serve a term of imprisonment, December 3, 1943. The Third Circuit Court of Appeals affirmed the judgment on March 15, 1944. (141 F. 2d 495) Certiorari was denied, May 22, 1944, 322 U. S. 744.

(3) William T. Klopp registered with Local Board No. 4, Middletown, Ohio, October, 1940. He claimed exemption and IV-D classification when filing questionnaire, June 12, 1941. He had been a minister of Jehovah's witnesses since June, 1940. He was placed in Class III-A by the local board, due to his marital status, on June 16, 1941. On November 15, 1943, the local board placed him in Class IV-E. On a personal appearance on November 29, 1943, notes were taken by the Secretary of the local board and subsequently presented to the board of appeal, containing false and distorted statements to the prejudice of Klopp. A reopening of his case to correct the prejudicial report was denied Klopp. The board of appeal affirmed the IV-E classification and he was ordered to report for assignment to a civilian public service camp. Failing to do so he was brought to trial and sentenced to a term of five years and a fine of $3500, on May 15, 1944. The Sixth Circuit Court of Appeals affirmed the judgment on March 26, 1945. (148 F. 2d 659) This case

is identical to that of *Dodez* v. *United States*, 67 S. Ct. 301. Klopp was accepted upon a preinduction physical examination prior to his assignment to camp, thus exhausting his remedies. At the time he was ordered to report, no physical examinations were given assignees at the civilian public service camps. The rule of *Dodez* v. *United States* applies.

(4) Charles J. Meng registered in October, 1940, with Local Board No. 14, Bellevue, Pennsylvania. He had been one of Jehovah's witnesses since July, 1935. He filed his questionnaire on January 8, 1941, claiming exemption and IV-D classification. He filed Special Form for Conscientious Objector on January 23, 1941, to further explain his ministerial status. On March 6, 1941, he was placed in Class I-B by the local board. This was changed to Class IV-E on March 13, 1941. He had a personal appearance on March 23, 1941, and was continued by the local board in Class IV-E on May 5, 1941. On May 5, 1941, he became the presiding minister of the West End Unit of the Pittsburgh Company of Jehovah's witnesses and so informed the local board. On September 25, 1941, he was placed in Class IV-E-H due to his age, and again placed in Class IV-E on February 17, 1942. Upon appeal, he was continued in such classification on August 13, 1942. He was accepted upon a final-type physical examination on September 27, 1942, thus exhausting his administrative remedies. He failed to report for assignment to a civilian public service camp on November 19, 1942, and was sentenced to serve five years' imprisonment on June 2, 1943. The judgment was affirmed by the Third Circuit Court of Appeals on February 11, 1944, 140 F. 2d 315.

(5) Homer F. Parsons registered with Local Board No. 133, Brooklyn, New York, October, 1940. He had been one of Jehovah's witnesses all his life. He filed his questionnaire on January 8, 1941, claiming exemption and classification in IV-D. The local board placed him in Class 1-A

on May 12, 1941. He was continued by the local board in such classification after a personal appearance when he filed additional material supporting his ministerial claim. On July 2, 1941, the local board reclassified him to III-A due to his marital status. On September 28, 1942, he was again placed in Class I-A by the local board. Upon appeal he was continued in Class I-A on April 1, 1943. He failed to report for induction on July 1, 1943, and was subsequently sentenced to serve a sentence of two and one-half years' imprisonment on December 27, 1943. The Second Circuit of Appeals affirmed the judgment on January 22, 1945. (146 F. 2d 874) Certiorari was denied, 325 U. S. 851.

(6) Sigismund F. Swaczyk registered with Local Board No. 96, Medford, Massachusetts, October, 1940. He had been one of Jehovah's witnesses since 1939. Due to his marital status he was placed in Class III-A by the local board on January 6, 1941, although he had claimed exemption and IV-D classification when he filed his questionnaire. On May 26, 1943, he was placed in Tentative Class I. Following a physical examination on June 6, 1943, he was reclassified to IV-E on June 14, 1943. He appeared before the local board on June 28, 1943, at which time he filed a statement setting forth his ministerial claim and a statement signed by 56 persons in support of his claim and showing that he served as the assistant presiding minister of the Malden, Massachusetts, Company of Jehovah's witnesses and had done so since November 14, 1941. The local board indicated that the only reason he was not placed in Class IV-D was because his name did not appear on a certified list at State Headquarters of Selective Service System, not a requirement under the Act. He appealed and on November 16, 1943, his classification was changed to I-A by the board of appeal. He submitted a certificate of his appointment on November 18, 1943. The board of appeal placed him in Class II-B (an occupational deferment) on January 17, 1944. The local board reclassified him to I-A on

April 24, 1944, whereupon he appealed and the board of appeal again placed him in Class II-B on June 20, 1944. Again on September 18, 1944, the local board placed him in Class I-A. He had a personal appearance, was accepted on a preinduction physical examination and his case again went to the board of appeal following his acceptance by the armed forces. The board of appeal affirmed the I-A on November 15, 1944. He thereafter was given another personal appearance and again placed in Class I-A by the local board on November 28, 1944, from which an appeal was taken, resulting in the board of appeal again affirming on January 3, 1945. He reported for induction on January 15, 1945, but declined to submit to induction, thus exhausting his administrative remedies. On trial on April 12, 1945, he was sentenced to serve three years imprisonment. (The matter of his engaging part-time in secular work in order to sustain himself in the ministry seemed to be the outstanding reason that the local board would not recognize him as a minister.) On appeal to the First Circuit Court of Appeals, the judgment was affirmed on June 13, 1946. (156 F. 2d 17) Certiorari was denied on October 14, 1946, 67 S. Ct. 77.

LETTER

from Hayden Covington to the Director of Selective Service System, answer to which is printed (pp. 66-74) in Brief filed by the Government in cause No. 840.

LAW OFFICES OF
HAYDEN COVINGTON
117 ADAMS STREET, BROOKLYN 1, NEW YORK
April 23, 1946

General Lewis B. Hershey
Director of Selective Service
Washington, D.C.

Dear General Hershey:

It occurs to me that undue consideration is given to the fact that some of Jehovah's witnesses engage in secular employment as a means to sustain themselves in their ministry. From time to time full-time ministers of Jehovah's witnesses engage in part-time secular work to take care of necessary obligations. The historic nature of the ministerial function of Jehovah's witnesses, according to practice and necessity, requires Jehovah's witnesses to support themselves partially by secular work if they are engaged in the full-time ministry or wholly by secular work if they are engaged in the part-time ministry, unless they have a source of private income or are supported from contributions by friends, relatives of the Society. Time and again men have been placed in Class I-A and appeals have been denied and review by the National Headquarters has been denied, because the file reflects that the particular minister supported himself by secular work. It seems that the denial of the ministerial status to Jehovah's witnesses on this account, when it is not withheld from some clergymen of other denominations, is contrary to State Director Advice 213-B, Part III, paragraph 3, which reads:

"The historic nature of the ministerial function of a registrant's own religious organization must be taken into consideration in each individual case. In some religious organizations both practice and necessity require the minister to support himself, either partially or wholly, by secular work."

It will be appreciated if you will take steps to see that the liberal policy enunciated in this quotation is followed by the State Directors and the members of your staff at National Headquarters in determining whether or not review should be had in cases involving Jehovah's witnesses. I am quite sure that if the draft boards and other members of the Selective Service System had liberally applied the principle announced in this quotation, in harmony with the historic nature of the ministerial function, there would not have been so many thousands of Jehovah's witnesses denied their ministerial status resulting in their incarceration under the Selective Training and Service Act during the war, resulting in hardship and injustice to many registrants who are now behind prison walls.

An effort is being made to alleviate these hardships and injustices through parole granted by the Board of Parole. However, only a small percentage of the men are receiving the benefit of such parole.

Sincerely,

[signed] Hayden Covington